

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 146 OF 2018

(Against the Order dated 30/08/2017 in Appeal No. 40/2016 of the State Commission Rajasthan)

1. STATE OF RAJASTHAN & 2 ORS.
THROUGH DISTRICT COLLECTOR
KOTA
RAJASTHAN

2. CHIEF MEDICAL AND HEALTH OFFICER,
NAYAPURA
DISTRICT-KOTA
RAJASTHAN

3. MEDICAL OFFICER & INCHARGE,
COMUNITY HEALTH CENTRE, RAMGANJ MANDI,
DISTRICT-KOTA
RAJASTHAN

.....Petitioner(s)

Versus

1. ROBINA
W/O. IQBAL HUSSAIN, R/O. KHEEMACH TEHSIL
RAMGANJ MANDI,
DISTRICT-KOTA
RAJASTHAN

.....Respondent(s)

BEFORE:

HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER

For the Petitioner :

For the Respondent :

Dated : 23 Jan 2023

ORDER

Appeared at the time of arguments

For the Petitioner : Mr. Harsha Vinoy, Advocate

For the Respondent : Mr. B.S. Sharma, Advocate

Pronounced on: 23rd January 2023

ORDER

1. This Revision Petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the Order dated 30.08.2017 passed by State Consumer Dispute Redressal Commission, Rajasthan (for short "the State Commission") in Appeal No. 40/2016, wherein the State Commission dismissed the Appeal of the Petitioners and modified the Order of District Forum.

2. The issue relates to the failure of tubectomy operation, which resulted in the unwanted pregnancy, whether it was medical negligence.

3. Brief facts that the Complainant Robina underwent tubectomy operation in the Family Planning Camp organized by the State of Rajasthan. It was performed by the Medical Officer (OP-3) at Community Health Centre (CHC), Ramganj Mandi on 07.11.2005. However, subsequently, the Complainant once again conceived after two months of tubectomy and delivered a female child on 16.06.2006. Being aggrieved, the Complainant filed the Consumer Complaint before the District Forum.

4. The Petitioners/OPs denied the negligence and submitted that tubectomy operation was performed by qualified Surgeon at CHC. Several women also underwent the tubectomy operation successfully. The recanalization is known after tubectomy. Therefore, it cannot be said as negligence.

5. The District Forum allowed the Complaint and awarded compensation of Rs. 2,00,000/- along with litigation cost of Rs.5,000/- against the OPs to pay jointly and severally. The District Forum observed as below:

“After hearing the rival parties, so far as the question of committing negligence and carelessness in doing Nusbandi by Respondent NO.3 is concerned, in it there is no requirement of any Specialist Report, because when the Nusbandi of Complainant was done on dated 07.11.2005, then thereafter she ought not to give birth to any child, but even then giving birth to a child by her, which proves that the operation remained unsuccessful and reason of failure of operation remained to be the negligence and, irresponsible act of the operator Doctor (Respondent NO.3). In it there is no need of any Specialist Report and there is no need to establish any negligence. The facts of failure of Nusbandi Operation of the Complainant and thereafter by her giving birth to a child, suo motu establishing the negligence and deficiency in service of the Respondent No.3. Since, Respondent No.3 and Respondent No.2 are under subordination of Respondent No. 1 therefore, for this negligence and deficiency in service all the three Respondents are responsible. On this point we receive light from the judicial citation CPJ 2000 Page-53 (SC) 'S. Sagir Ahmad V/s Smt. Santra' produced by the Complainant.”

6. Dissatisfied with the Order of the District Forum, the Petitioners / OPs filed an Appeal before the State Commission. The Appeal was partly allowed with modification of the Order of the District Forum by reducing the compensation amount to Rs. 1,00,000/-.

7. Being aggrieved, the OPs filed this Revision Petition.

8. Heard the learned Counsel for both the sides and perused the material on record. The short delay of 41 days is condoned.

9. It is pertinent to note that both the fora had overlooked the fact that according to the Complainant, she conceived after 3 months of tubectomy operation i.e. around February, 2006, but surprisingly she delivered a baby in June, 2006. This proposition is unbelievable. Thus in my view, the pregnancy was already existing prior to tubectomy and it was unnoticed during tubectomy.

10. On careful analysis (calculation) of the period of pregnancy, it is strange to note that,

- On 07.11.2005, the Complainant underwent tubectomy operation.

- On 16.06.2006, she delivered female baby.

- According to the Complainant, she gave birth to a healthy matured baby, meaning thereby, she completed 9 months of pregnancy.

- Thus, it clearly indicates, in the month of September, 2005, she conceived (became pregnant), which was earlier to tubectomy (07.11.2005).

- Thus, on 07.11.2005, she was in early pregnancy (in between 2 – 2 ½ months)

- To conclude that, by any stretch of imagination, the alleged pregnancy was not due to failure of tubectomy.

11. Both the fora have erred on the calculation of pregnancy period and arrived to erroneous finding that there was pregnancy due to tubectomy failure.

12. The learned Counsel for the Petitioner was kind enough to consider the peculiarity of this case and expressed that the Petitioner may consider and pay Rs. 30,000/- as under the Family Planning Insurance Scheme adopted as a National Policy. However, it is pertinent to note that the Scheme was implemented from 29.11.2005, therefore, it's a bad luck of the Complainant, who is not eligible to get the said benefit; as she underwent tubectomy on 07.11.2005.

13. On the basis of foregoing discussion, the instant case does not fall under failure of tubectomy operation. Even otherwise, it is well settled that the methods of sterilization / tubectomy are not absolutely safe and secure and such failures does not deserve compensation as held by the Hon'ble Supreme Court in the case of **State of Punjab Vs. Shiv Ram and Ors.**[\[1\]](#).

14. Based on the discussion above, the fora below have erred in holding the OPs liable for failure of tubectomy. The instant Revision Petition is allowed and the Order of the State Commission is set aside. Consequently, the Consumer Complaint No. 269 of 2008 filed before the District Forum stands dismissed.

15. The statutory amount, if any, deposited by the Petitioner before the State Commission or the District Forum, shall be released to the Petitioner.

[\[1\]](#) AIR 2005 SC3280

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DR. S.M. KANTIKAR
PRESIDING MEMBER